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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,589	09/22/2005	Steffen Schule	PSEE200020	9122
27885	7590	12/08/2009		
FAY SHARPE LLP 1228 Euclid Avenue, 5th Floor The Halle Building Cleveland, OH 44115			EXAMINER SAYALA, CHHAYA D	
			ART UNIT	PAPER NUMBER
			1794	
			MAIL DATE	DELIVERY MODE
			12/08/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/527,589

Applicant(s)

SCHULE ET AL.

Examiner

C. SAYALA

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/2/2009 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2, line 3, "high" is of indeterminate scope. In line 4, "substantial" is indefinite unless defined in the specification because what is considered 'substantial' is unascertainable.

Claim 2 recites an animal food additive. It is not clear what the following phrase means: "and such a high swelling capacity that the swelling is carried out to a substantial extent while the food, *which does not contain the animal food additive*, is still found in the stomach" (emphasis added). If the animal food additive is not in the food, and the claim is drawn to the food additive, it is not clear what this limitation represents.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 612562.

With regard to claim 1, drawn to a crude fiber concentrate of fibrillated lignocellulose, the EP patent teaches fibrillated lignocellulose. See col. 3, lines 27-28, 53-54, col. 4, lines 20-21 and claim 1. The claim also includes intended use language and a property of the additive, such as limiting food intake during ad libitum feeding, both of which do not lend patentability to an old and known product.

With regard to claims 2 and 11, applicant has chosen to describe his product with more physical properties that the Office does not have the resources to measure with respect to prior art products, and make comparisons therewith, and therefore, that burden is being shifted to applicant to establish that the product is different. Since the EP patent also discloses fibrillated cellulose, then the properties recited in these claims must be inherent.

3. Claims 1-4, 6-11 are rejected under 35 U.S.C. 102(b) as being anticipated by FR 2627668.

The FR patent teaches a lignocellulose material that has been compacted to pellets to be used as an animal feed additive. See the two abstracts supplied. Also see the last page of the translation at the first two paragraphs. The patent teaches that after processing the lignocellulose, the final product is a porous fibrous material. See page 1, last full paragraph. Claim 1 limitations of use do not establish patentability of an old and known product because these limitations are directed to intended use. Claims 2 and 11 that recite properties of an old and known product do not distinguish the product because such properties would be inherent to the product.

4. Claims 1-4, 6-11 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 95/05087.

The WO patent teaches a lignocellulosic fibers whose particle size has been reduced, that can be pelletized and is intended as an animal feed additive. See page 6, lines 25-27, page 7, lines 1-4, page 13, lines 7-10, 25-30, page 14, lines 1-2. The WO patent teaches palletizing lignocellulose fibers. See page 14, lines 21-22. Note that the claims teach the animal feed. Claims 2 and 11 that recite properties of an old and known product do not distinguish the product because such properties would be inherent to the product.

5. Claims 1-4, 7-9, 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Tyson (US Patent 5705216).

Tyson teaches a ruminant feed which includes lignocellulose that is in the form of hydrophobic fibers. Figure 1, which is one of the two embodiments of the patent, exemplifies a method which includes a fibrillator which clearly shows that fibrils or fibers were formed. See also col. 3, lines 56-58, col. 5, lines 50-55. Col. 7, lines 15-20 and col. 11, line 63 show compacting. Col. 11, lines 28-35, 40-45 shows fibrillation to produce hydrophobic fibers. Claims 2 and 11 that recite properties of an old and known product do not distinguish the product because such properties would be inherent to the product.

6. Claims 1-4, 7-9, 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Bender (US Patent 4136207).

Bender is drawn to animal feeds that include lignocellulose that is mechanically compacted (abstract) and col. 4, lines 3+ shows fibrillation. Claims 2 and 11 that recite properties of an old and known product do not distinguish the product because such properties would be inherent to the product.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over FR 2627668 or WO 95/05087 or Tyson or Bender in view of Schroeder et al. (US Patent 4431675) and Markussen et al. (US Patent 4106991).

The primary references teach lignocellulose fibers as animal feed additives but fail to disclose the amounts claimed. Schroeder et al teach cellulose amounts in animal feed at Table 1 as up to 2.5% and Markussen teach finely divided cellulose fibers in an amount 2-40%. To fathom the proper amounts of fiber based on such disclosures would have been prima facie obvious, both of which show amounts that include the range claimed instantly.

Response to Arguments

Applicant's arguments with respect to claims 1-11 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Sayala, whose telephone number is (571) 272-1405. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/C. SAYALA/
Primary Examiner, Art Unit 1794**